

**UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA**

Xcedex, Inc., and Bababa Software, Inc.,

Case. No. 10-CV-3589 (PJS/JJK)

Plaintiffs,

v.

ORDER

VMware, Inc.,

Defendant.

Andrea C. Wiltrout, Esq., and Tiffany A. Blofield, Esq., Winthrop & Weinstine, P.A. for
Plaintiffs Xcedex, Inc., and Bababa Software, Inc.

Timothy J. Cruz, Esq., Faegre & Benson LLP, counsel for Defendant VMware, Inc.

The above matter comes before the Court upon the Report and Recommendation of
United States Magistrate Judge Jeffrey J. Keyes dated June 8, 2011. No objections have been
filed to that Report and Recommendation in the time period permitted. Based upon the Report
and Recommendation of the Magistrate Judge, upon all of the files, records, and proceedings
herein, the Court now makes and enters the following Order.

IT IS HEREBY ORDERED that:

1. Defendants' Motion to Dismiss [Docket No. 27], is **GRANTED**. Count III of
Plaintiffs' Amended Complaint is dismissed.

Date: June 30, 2011

s/Patrick J. Schiltz
Patrick J. Schiltz
United States District Judge